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December 23, 2020

VIA ELECTRONIC FILING
The Honorable Jocelyn G. Boyd
Clerk
South Carolina Public Service Commission
101 Executive Center Dr., Suite 100
Columbia, SC 29210

RE: Cherokee County Cogeneration Partners, LLC v. Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, **Docket No. 2020-263-E**

Dear Jocelyn:

Cherokee Cogeneration Partners, LLC ("Cherokee) supplements the timeline and issues previously raised before the Commission to address more recent activity that further highlights the non-transparent and discriminatory behavior by Duke Energy Carolinas, Inc. ("DEC") and Duke Energy Progress, Inc. ("DEP") (together "Duke") towards Cherokee.

In its "Response to Request for Interim Relief" ("Response"), Duke argued that an extension of the parties' current PPA was inappropriate in part because "DEC's obligation under PURPA to purchase all of the energy from the Cherokee Facility continues." (Response at p. 11). Specifically, Duke claimed that an arrangement through which Cherokee would deliver energy to Duke on an "as available" basis pursuant to 18 C.F.R. § 292.304(d)(1), is "fully consistent with PURPA" (Response at p. 11) and represents "the most equitable result for DEC's customers …." (Response at p. 12). Duke also made this argument in the Oral Argument before the Commission on December 10, 2020 regarding "as available" variable rates starting in 2021.

It is true that Cherokee did request that Duke provide it with a fallback arrangement in the event this Commission does not grant interim relief, in the interests of continuing to keep the Cherokee Facility in operation.[1]

However, Duke did not offer Cherokee a Variable Rate Agreement including the "variable rate" approved by this Commission in Docket Nos. 2019-185-E and 2019-186-E and made available by Duke to other Qualified Facilities (QFs). Instead, the "as available" contract

[1] Cherokee ultimately desires to enter into an agreement with Duke to sell energy and capacity at its avoided costs rates as of the date Cherokee established its LEO (September 18, 2018). As Cherokee would not be receiving capacity revenues under a "variable rate" arrangement, it would be negatively impacted by selling at these rates versus a long-term PPA.

Duke offered to Cherokee on December 15, 2020 commits to no rate at all. Instead, it states that the rates Cherokee receives would be based on a "black box" model essentially run at Duke's discretion each hour and determined only *after* Cherokee delivers the electricity. Duke's offer is plainly unconscionable for a facility such as Cherokee, which has considerable variable fuel costs such that it must understand the economics of running *before* it operates to avoid running at a loss.

Duke's proposal differs drastically from the variable rate already approved by the Commission and available to other QFs. The proposed contract would put Cherokee in a situation where it would have no idea what price it would receive for its power, while having to procure fuel in advance of operating the facility and with no ability to determine whether the price Duke decides to pay under the contract will even cover its costs to run. Given the complete lack of transparency associated with this proposal, Cherokee has no basis to determine whether the price it receives is fair and reasonable or consistent with the Commission's PURPA implementing orders.

Cherokee discussed with Duke the unworkable and discriminatory nature of the "as available" form of contract provided by Duke on Dec 18, 2020. Duke informed Cherokee that there are other QFs in the Duke Energy Carolinas territory using a "Variable Rate" agreement that includes specific contract rates for energy. Cherokee requested that Duke offer Cherokee such a "Variable Rate" arrangement such that Cherokee can make economic decisions on when to operate or when not to just like other QFs whose contracts have expired. Duke responded that the Cherokee plant does not qualify for a "Variable Rate" agreement because the existing Duke-Cherokee PPA is not a "long-term PPA, and because that PPA contains a "tolling agreement." To be clear, nothing in the federal statute, FERC's regulations, or SCPSC orders justifies offering discriminatory terms to a QF based on the form of its prior contract, particularly where, as here, that contract makes clear on its face that it represents an agreement entered into under PURPA.

Duke's response has no valid basis in law or policy, and is only further evidence of Duke's dilatory tactics and discriminatory behavior towards Cherokee, continuing now for over 2 years. Cherokee has provided energy and capacity to Duke as a QF pursuant to PURPA for over 20 years. The existing PPA involves a power sale from Cherokee to Duke pursuant to PURPA, and no provision therein authorizes Duke to treat Cherokee differently from other similarly situated QFs employing a Variable Rate Agreement. The Commission has approved both power sales agreements between Cherokee and Duke where Cherokee provided Duke Energy Carolina's Capacity and Energy as a Designated Capacity Resource under the provisions of PURPA. For Duke to claim that Cherokee is not entitled to a Variable Rate energy only contract with known pricing similar to other entities in Duke's service territory is discriminatory on its face and should not be allowed.

Furthermore, the proposed "as available" contract highlights the urgency for the Commission to grant Cherokee's request to extend the existing PPA, as it has not been provided any reasonable, workable alternative to operate and sell its electricity starting January 1, 2021 during the pendency of these proceedings, despite Cherokee's good faith attempts to secure a mutually beneficially contractual arrangement with Duke, initiated over two years in advance of the contract's expiration.

Very truly yours,

s/John J. Pringle, Jr.
John J. Pringle, Jr.

JJP
Cc: Frank R. Ellerbe, Esq. (via electronic mail)
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